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In the Supreme Court of the United States

OCTOBER TERM, 1960.

No. 572

JAMES BUSH and REVA FINCHUM BUSH,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

Petitioners, James Bush and Reva Finchum Bush, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on September 28, 1960, and the Order Denying Rehearing entered October 31, 1960.

CITATIONS TO OPINIONS BELOW.

The memorandum opinions of the United States District Court for the Eastern District of Tennessee, Northern Division, are unreported and are printed in the Certified Record (Appendix below) at page 58a to page 66a, of which nine additional copies are filed herewith. The Supplemental Opinion of the District Court is on pages 67a to 74a of the Certified Record. The Judgment of the Circuit Court of Appeals is printed at page 16, *infra*. The

opinion of the Circuit Court of Appeals is printed at page 10, *infra*. The certificate, duly authenticated by the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, is filed herewith.

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Sixth Circuit was entered on the 28th day of September, 1960. (p. 16, *infra*.)

Rehearing was denied on the 31st day of October, 1960. (p. 16, *infra*.)

The jurisdiction of this Court is invoked under 28 U. S. C. section 1254.1 (and Rule 37 (b) (1), Federal Rules of Criminal Procedure).

QUESTIONS PRESENTED.

1. Did the Court of Appeals err in reversing the judgment and opinion of the District Court on petitioners' motion to suppress the evidence?

2. Did the Circuit Court of Appeals err in holding that an entry into the dwelling house of the petitioner, James Bush, a person suspected of crime, by means of previous deception or false representation was not unreasonable and does not violate the Fourth Amendment to the Constitution of the United States. This decision is in direct conflict with the decision of the Third Circuit Court case of *Fraternal Order of Eagles No. 778, Johnstown, Pennsylvania, et al. vs. United States*, 57 Fed. (2) page 93.

3. Did the Court of Appeals for the Sixth Circuit err in deciding a federal question of substance in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in the case of *Sommers et ux v. United States*, Circuit Court of Appeals, 138 Fed. (2) 790, when the 6th Circuit Court of Appeals held that conversations with the petitioner, Reva Finchum Bush, wife of James Bush, out of the presence of the husband, could and did afford the basis of an affidavit for the issuance of a legal and lawful search warrant to search the residence of the petitioner, James Bush.

4. Did the Court of Appeals err in holding in effect that the petitioner, Reva Finchum Bush, could and did waive the Constitutional rights of the petitioner, James Bush, when, after an illegal trespass had already been committed and after several minutes of persuasion including misrepresentations, etc., she extended an implied invitation to the officers and others who followed her into their dwelling house.

5. Did the Court of Appeals err when it decided an important question of federal law in a way probably in conflict with the applicable decisions of this Court and when its decision departed from the accepted and usual course sanctioned and followed in the various lower courts, the question being of general importance and of substance relating to the construction and/or application of the statutes of the United States and of the Constitution of the United States. The Court of Appeals for the Sixth Circuit did not cite an applicable decision of this Court and the question is of such importance as to call for an exercise of this Court's power of supervision.

CONSTITUTIONAL PROVISION INVOLVED.

The constitutional provision involved is the Fourth Amendment to the Constitution of the United States, which is as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

STATEMENT.

The petitioners and each of them were indicted on a four-count indictment charging a joint violation of 5008(b) of the Internal Revenue Code, on or about the 4th day of June, 1958.. The second count of the indictment charged them with violating section 5632 of the Internal Revenue Code on the same day. The third count of the indictment charged a violation of section 5008(b) on June 13, 1958, and the fourth count charged a violation of 5632, Internal Revenue Code on or about June 13, 1958. (Certified Record, page 59a.)

Petitioners filed a motion to suppress the evidence and to quash the indictment. The motion was based on seven grounds. Record pages 8a through 10a. Issue was joined and there was a hearing before the Court on the motion to suppress the evidence. (Record page 11a to 58a.)

At the hearing on December 12, 1958, the District Judge pronounced his finding of fact and conclusions of law, and on the same day filed a consolidated memorandum sustaining the motion of the defendants (petitioners) to suppress the evidence illegally obtained by the government within the jurisdiction of the District Court, and an order was entered to that effect. (Record pages 58a to 66a.) Thereafter, the United States Attorney moved the Court to reconsider his ruling upon motion and the motion was granted. (Record page 66a.) The cause was again briefed and reargued on April 23, 1959. Whereupon, the Court again reaffirmed his previous opinion and made and entered a supplemental opinion considering the further objections by the District Attorney, and the Court again sustained the motion of petitioners and made and entered an order to that effect. (Record pages 67a to 74a.)